

CHAPTER 01

INTRODUCTION

TABLE OF CONTENTS

	<u>Page</u>
01.01 INTRODUCTION	1
01.05 PURPOSE AND OBJECTIVES	1
01.10 SCOPE	3
01.15 LEGAL BASIS	3
01.20 GENERAL OVERVIEW	4
01.201 THE INDIAN CHILD WELFARE ACT - HOW AND WHY IT WAS ADOPTED	4
01.202 FEDERAL AND STATE LAW/POLICY	8
01.203 HISTORICAL BACKGROUND	10
01.204 INDIAN CHILD REARING PRACTICES	12
01.205 INDIAN CHILD WELFARE IN WASHINGTON STATE TODAY	13
01.25 CA INDIAN AFFAIRS POLICY	16
01.30 AUDIENCE	17
01.35 COORDINATION AND COMMUNICATION WITH TRIBES AND NATIVE ORGANIZATIONS	18
01.40 SANCTIONS FOR NON-COMPLIANCE – PRIVATE AGENCIES AND CONTRACTORS	20
01.45 REQUIREMENT WAIVERS	24
01.50 LICWAC/STATE IMPASSE PROCEDURES	24

01.01 INTRODUCTION

- A. The Department of Social and Health Services (DSHS) offers child welfare services to Indian Children through the Children's Administration (CA). This CA *Indian Child Welfare Manual* provides policy and procedural guidelines for staff of CA, CA-licensed or certified public and private child care and placing agencies, and CA-contracted agencies and providers that work with American Indian children and families. CA has consolidated Indian Child Welfare (ICW) procedures in this manual.
- B. CA staff, CA-licensed or certified public and private child care and placing agencies, and CA-contracted providers must follow procedures in this manual when serving Indian children and families. In addition, these agencies and their employees must comply with the requirements for serving all children and families contained in the CA *Case Services Policy Manual* and the CA *Practices and Procedures Guide*. If a requirement in one of those manuals conflicts with a requirement contained in this manual, staff and providers must comply with the provisions of this manual, unless required by law to do otherwise.

01.05 PURPOSE AND OBJECTIVES

- A. **Purpose**
 - 1. Historically, state courts and child welfare agencies have made a disproportionate number of removals of Indian children from their families and Tribes, with placement of those children outside of their families, Tribes, and Indian culture. Significant social problems developed from these violations of laws and rights and the cultural disorientation associated with the unwarranted relocation of Indian children.
 - 2. CA has designed the procedures in this manual to prevent the arbitrary removal of Indian children from their families and to promote the child remaining in the native community if such removal is necessary. The procedures include, but are not limited to:

**CHILDREN'S ADMINISTRATION
INDIAN CHILD WELFARE MANUAL
CHAPTER 01—INTRODUCTION**

- a. Immediate notice of commencement of Child Protective Services (CPS), Child in Need of Services (CHINS), At-Risk Youth (ARY), or other pre-judicial investigation or intervention to the child's identified Tribe(s);
- b. Notice of state court child custody proceedings to a child's Tribe as well as to the Indian child's parents or Indian custodians;
- c. Transfer of child custody cases from state court to Tribal Court;
- d. The right of a child's Tribe to intervene in state court child custody proceedings;
- e. Case planning and consultation with a child's Tribe;
- f. Placement of Indian children in Indian homes;
- g. Higher standards of evidence than those usually applicable in child custody cases regarding dependency and termination of parental rights;
- h. Procedures for court approval of consent to place, voluntary relinquishment, and adoption of Indian children; and
- i. Unique rights for Indian adoptive children.

B. Objectives

- 1. The Children's Administration, public and private licensed or certified child care or placing agencies, and other contractors must make every effort to provide and enhance culturally relevant and sensitive child welfare services to Indian children and their families.

2. The Children's Administration is committed to:
 - a. Preserving the cultural heritage of Indian children by ensuring that staff identify tribal children immediately and connect the children to their Tribes through early tribal notification by DCFS staff, licensed or certified public and private child care and placing agencies, and CA contractors.
 - b. Recognizing tribal rights and cooperating with Tribes' efforts toward enhanced self-determination relative to child welfare matters.
 - c. Establishing policies and procedures that protect Indian children from unnecessary removal from their families and tribal communities.

01.10 SCOPE

The rules and procedures set forth in this manual apply to all child welfare actions, taken by CA or licensed, certified, or contracted agencies, involving children and families of North American Indian descent.

01.15 LEGAL BASIS

Children's Administration has based the procedures contained in this manual on applicable state law contained in the Revised Code of Washington (RCW), federal law contained in the United States Code (USC), treaties, agreements with the Tribes, and the Washington Administrative Code (WAC). These include:

- The United States Constitution
- 25 USC 1901, et seq. - Indian Child Welfare Act
- 42 USC 675 – the Social Security Act
- 42 USC 671a – Inter-Ethnic Placement Act
- RCW 13.32a - Family Reconciliation Services
- RCW 13.34 - Juvenile Court Act - Dependency
- RCW 26.33 – Adoption

**CHILDREN'S ADMINISTRATION
INDIAN CHILD WELFARE MANUAL
CHAPTER 01—INTRODUCTION**

- RCW 26.34 - Interstate Compact on the Placement of Children
- RCW 26.44 - Abuse of Children
- RCW 74.13 - Child Welfare Services
- RCW 74.14a – Children and Family Services
- RCW 74.14b – Children's Services
- RCW 74.14c – Family Preservation Services
- RCW 74.14d – Alternative Family-Centered Services
- RCW 74.15 – Care of Children, Expectant Mothers, and Developmentally Disabled
- The State-Tribal Centennial Accord
- Tribal-State Indian Child Welfare Agreement of 1987
- Chapter 388 WAC
- Treaties between Indian Tribes and the U. S. government
- Treaties between Indian Tribes and the state of Washington
- Other applicable federal and state laws
- Federal and state court decisions

01.20 GENERAL OVERVIEW

01.201 THE INDIAN CHILD WELFARE ACT – HOW AND WHY IT WAS ENACTED*

The Indian Child Welfare Act (ICWA) was enacted in 1978 after an 11-year effort spearheaded by the Association on American Indian Affairs and after relentless political advocacy by national Indian and non-Indian organizations, Tribes, members of Congress, and journalists. President Carter approved ICWA over the objection of the Departments of the Interior, Health, Education and Welfare, Justice, and the Office of Management and Budget. A number of states, however, supported enactment, including Arizona, Arkansas, California, Georgia, Massachusetts, New Mexico, North Dakota, Oklahoma, Oregon and Washington.

**CHILDREN'S ADMINISTRATION
INDIAN CHILD WELFARE MANUAL**

CHAPTER 01—INTRODUCTION

By the time ICWA was enacted, Indian Tribes had been subjected to several hundred years of non-Indian efforts to terminate tribal existence, and as a part of this effort, separated Indian children from their Tribes in order to “civilize” or assimilate them. In the 30 years immediately preceding ICWA’s enactment, these efforts included the removal of thousands of Indian children from their families and Tribes through state court child abuse and neglect proceedings that often targeted Indians, applied state laws in discriminatory ways and failed to adhere to due process norms. In addition, other thousands of Indian children were “voluntarily relinquished” for adoption by their Indian parents under circumstances that appeared lawful but where coercion or duress were the underlying factors. In some extreme cases, Indian children were even kidnapped from their Indian families. In almost every one of these situations, the Indian children were placed in white foster or adoptive homes. Rarely were these children returned to their families or tribal communities. By the 1970’s, many Tribes experienced a 25 percent to 35 percent out-placement of their children. We know of at least one Tribe that had 100 percent of its children in foster or adoptive home.

Realizing that the destruction of so many of their families threatened the continued viability of the tribal community, Tribes and their supporters mobilized a national campaign to secure legislation that would protect the integrity of Indian families and Tribes, understanding that this protection also promoted the best interests of Indian children.

It was apparent that state courts had systematically applied state laws in ways that unnecessarily authorized Indian children to be placed away from their families and Tribes. ICWA’s foremost goal, therefore, was to shift the decision-making authority from state to tribal government. Henceforth, tribal social service agencies and courts, applying tribal laws and customs, would be the primary (if not the only) decision-makers in determining the best interests of Indian children.

ICWA, however, did not entirely disable state courts from approving Indian child placements. After the enactment of ICWA, state courts continued to exercise at least initial jurisdiction over Indian children neither domiciled nor resident within a tribal community. But ICWA changed the ground rules of these state court proceedings. It mandated that Tribes be able to participate in the proceedings, including voluntary termination of parental rights and foster care placement proceedings, and by allowing, under certain conditions, for Tribes to permanently transfer the proceedings to tribal court.

When transfer to tribal court does not occur, ICWA imposes on state courts certain due process requirements that are often lacking under state law. For example, in involuntary proceedings, an Indian child cannot be removed from its parents' custody unless there is substantial proof that the parents' activities seriously injured the child. Before this requirement was enacted, Indian parents often lost custody of their children because the non-Indian authorities did not approve of the parents' lifestyle or the parents' culturally rooted, child-rearing practices. In addition, ICWA required that before a child is removed, services be provided to the family in an effort to avoid removal. This was a novel idea before ICWA. And uniquely significant, ICWA requires state courts and agencies to apply tribal law or custom in carrying out certain ICWA provisions.

Similarly, in voluntary proceedings, ICWA requires the court to assure that the consent to placement was truly voluntary, and to make sure that the parents understand their rights, including the right to revoke consent. Prior to ICWA, many states did not even require voluntarily consenting parents to appear in court and explanations of rights were left to caseworkers or others whose interests were not the same as the parents. This commonly led to misunderstandings about the nature of legal documents signed and the unexpected and undesired permanent loss of custody.

While ICWA's overriding aim is to prevent the placement of Indian children, there are obvious situations where placement is unavoidable, even after all efforts have been made to keep a child with his or her family. In these situations, ICWA generally mandates that the child be placed in an Indian home, with extended family having first preference. This requirement applies whether the child is placed as the result of a voluntary or involuntary proceeding.

In sum, ICWA prescribes that it is in the best interests of Indian children to remain in the custody of their Indian parents or, if necessary, with other members of their extended family or Tribe and connected to their tribal communities. Any discretion exercised by state judges in conflict with this definitional component of "best interests" violates ICWA.

**CHILDREN'S ADMINISTRATION
INDIAN CHILD WELFARE MANUAL**

CHAPTER 01—INTRODUCTION

ICWA fundamentally changed established federal and state policies and practices, and shifted a substantial element of power from states to Tribes. Therefore, it is not surprising that ICWA has been attacked. Early on, ICWA withstood several challenges to its constitutionality and has been continually whittled at on a case-by-case basis. Perhaps the most pernicious challenges come from courts that have deliberately misconstrued ICWA to find it inapplicable to Indian children who have not been sufficiently connected to an Indian family, or courts that have elevated to a rule the “good cause” exceptions in ICWA’s jurisdiction transfer and placement preference provisions.

Despite the decisions by a minority of state and federal courts that are contrary to ICWA’s express premises, ICWA has achieved its fundamental objectives. Tribes are able to make decisions involving their children in multitudes of tribal and state cases. This could not have happened before ICWA. As a consequence, many Indian children who before ICWA would have been raised in white families, have remained with their own families and Tribes. Tribes have also developed sophisticated social services systems spawned by ICWA. ICWA has caused a number of state and non-Indian local jurisdictions to develop positive and effective working relationships with tribal agencies and courts. The U.S. Supreme Court has recognized ICWA’s beneficial purposes.

ICWA appears to be the only national Indian rights legislation brought about by grassroots Indian advocacy. ICWA’s survival and thriving depends on constant vigilance by Tribes and their members. It also depends on appropriate action to defeat the venomous attacks still occasionally made against this beneficial law by persons who are committed to the termination of Indian Tribes by facilitating the placement of Indian children in white homes.

*This article, written by Bert Hersch, appeared in the July/August 1998 *Pathways*, a publication of the National Indian Child Welfare Association. It is reprinted by permission of the National Indian Child Welfare Association.

01.202 FEDERAL AND STATE LAW/POLICY

- A. The federal Indian Child Welfare Act (ICWA) of 1978 (25 U.S.C. 1901 et seq.) was the first federal legislation enacted to protect Indian children and families. This landmark law defines the rights of Tribes to assume jurisdiction over children who are members or eligible to be members in a Tribe. ICWA also requires that:
1. State and federal governments give full faith and credit to the public acts, records, and judicial proceedings of Indian Tribes;
 2. States give preventive services to Indian families prior to placing children in out-of-home care;
 3. States facilitate family rehabilitation using **active efforts**;
 4. States return Indian children to their families whenever possible; and
 5. States give preference to placing an Indian child with a member of the child's extended family, a foster home specified by the child's Tribe, or an Indian foster home or institution for children approved by the Tribe or operated by an Indian organization.
 6. States may enter into agreements with Indian Tribes respecting care and custody of Indian children and jurisdiction over child custody proceedings, including agreements that may provide for orderly transfer of jurisdiction on a case-by-case basis and agreements that provide for concurrent jurisdiction between states and Tribes.
 7. States provide a higher standard of protection and preservation of Indian families and Tribes through the establishment of standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes that will reflect the unique values of Indian culture.

**CHILDREN'S ADMINISTRATION
INDIAN CHILD WELFARE MANUAL**

CHAPTER 01—INTRODUCTION

- B. State law, enacted in 1987 and codified in Chapters 13.34, 26.33, 74.13, and 74.15 RCW, brings state procedures regarding voluntary foster care placements, relinquishments, and adoptions into compliance with ICWA. State law also recognizes that Indian Tribes have the authority to license child care and placing agencies or facilities within their boundaries. State law also specifies that:
 - 1. CA must develop a plan for recruiting an adequate numbers of Indian foster homes;
 - 2. CA has authority to pay foster care and other services for Indian children in tribal custody or care (if funds are available); and
 - 3. CA and its licensed or certified child placing agencies may place Indian children in tribally licensed child care facilities.
- C. In addition to federal and state laws, the state of Washington entered into a Tribal-State Indian Child Welfare Agreement (referred to as the Tribal-State Agreement) with Washington Tribes that sets standards for notification, social work practice, equal access to services, and cooperative case planning in cases involving all Indian children.
- D. The WAC contains provisions recognizing the unique status of Indian Tribes and their children. The original provisions predate the federal and state acts. A unique coalition of Washington state Tribes, off-reservation Indian groups, individuals concerned with the welfare of Indian children, representatives from the Office of the Attorney General, and staff of Children's Administration came together to revise the WAC to reflect current law and the Tribal-State agreement.
- E. Local Indian Child Welfare Advisory Committees (LICWAC) have been active in this state since 1971. LICWAC serves in an advisory capacity to CA in determining case planning for Indian children when CA has not identified the children's Tribes or the children's Tribes have requested LICWAC participation in behalf of the Tribe. The LICWAC also serves as the Child Protection Team (CPT) for Indian children. LICWAC volunteers are active in every region in the state and provide a valuable service to CA and Indian families.

- F. DSHS created an Office of Indian Affairs office in 1972, which became the Office of Indian Policy and Support Services (IPSS) in 1990. Personnel of Indian ancestry who are familiar with Indian communities staff the IPSS. This office is advisory to all Administrations of DSHS. It provides an ear for the various tribal and off-reservation Indian communities and a voice for input into policy development.
- G. In 1987, the department adopted DSHS Administrative Policy 7.01 to demonstrate the department's commitment to planning and service delivery to Indian governments and communities. Through this policy, DSHS follows a government to government approach to establishing policies and procedures for working with Indian Tribes.

01.203 HISTORICAL BACKGROUND

- A. Historically, the roots of the "unique" treatment of Indian people go back to before the United States was formed. When Europeans arrived on the shores of North America, they entered into wars, alliances, and treaties with the Indian nations that were already on the continent. The United States accepted some of those treaties, and the United States negotiated numerous other treaties subsequently.
- B. The United States and Indian Tribes entered into treaties to cede land and make peace between the parties to the treaties, to prevent Tribes from entering into alliances with other European nations, and to regulate commerce between the United States and Indian Tribes. A treaty with an Indian Tribe is similar to a treaty between the United States and any other nation.
 - 1. Indian treaty law is very confusing and is not evenly interpreted.
 - 2. Treaties frequently cede certain lands and rights to the United States while reserving (hence "reservations") other lands and rights to the Tribes. In return, the U.S. government promised to give monetary compensation, goods, education, health care, and protection from its other citizens to Indian Tribes.

- C. Although it is frequently argued that Indian treaty rights are historical and accusations are made about living in the past, treaties are legal contracts and the passage of time does not erode their validity. It is out of this unique relationship with the U.S. government that the Indian Child Welfare Act derives its authority to assert the rights of Indian Tribes to jurisdiction over their citizens.
- D. Indian children have been the subjects of special interest by non-Indian groups since the mid-1800s when missionary groups were represented in force on Indian reservations. The original justification for interference with Indian families and removal of their children was to save their souls, educate their minds to white culture, and break the bonds to their Tribes and families.
- E. Although adoptions of Indian children into non-Indian homes seldom occurred during the 1800s, the U. S. government removed the majority of Indian children to educational institutions such as boarding schools. The government made these residential programs mandatory for children of a certain height and age.
 - 1. Abusive practices were rampant. Soon after arrival, school authorities shaved the Indian children's heads and clothed the children in European fashion. The schools imposed harsh discipline and rigorously prohibited Indian language and customs.
 - 2. The government and the missionary societies located very few of the mission schools near Indian Tribes and children rarely returned home during vacations.
 - 3. Disease was epidemic, and the school cemeteries were filled with the small graves of children who would never go home.
- F. The boarding school system weakened natural familial ties, separated the children by language from their traditional teachers, who were the grandparents and elders of their Tribe, and prevented generations of children from learning how to be parents in a normal fashion. Many Indian people, after experiencing the punishments for practicing their own culture and language, did not want their children to learn anything of their tribal ways.

- G. The relocation policy also resulted in the movement of Indian families and individuals away from the reservation. The U.S. government designed the relocation policy to make Indian people move into cities for vocational training. The training frequently did not end in employment, but it did put children at risk by separating them from community sanctions against deviant behavior and from extended family supports.
- H. The extreme poverty of many Indian people served as a reason to remove Indian children from their families. To this day, Indian people continue to be the poorest in the land. Many Indian parents were and are labeled as hopeless cases because they lack knowledge about state approved methods of child care. These parents received little or no aid to correct problems that often result from poverty and lack of knowledge about the system. Additionally, private, state, and federal child welfare agencies rarely considered the child's extended family as a placement option.
- I. Indian parents who encountered social service systems often did not understand their rights or what the agencies expected of them. Many Indian people have a native tongue as their primary language despite the enormous pressure against retaining the native language. Even when the primary language is English, many Indian people have had limited education and are unable to take advantage of services when offered.

01.204 INDIAN CHILD REARING PRACTICES

- A. Indian cultures have high regard for their children. Many traditional cultures believe that if a child is not cared for by the child's relatives and loved, the spirit will return to the other side. Children are valued by Native American cultures, and most Tribes, by custom, prohibited abusive practices which were part of European North American culture. Writings from the 19th and the early 20th centuries criticized Indian parents for "sparing the rod and spoiling the child."

- B. One aspect of Indian culture that has been a continuous source of misunderstanding in child welfare practice is that children were often not considered to be solely under parental care and authority. Extended family, especially grandparents, had a formal say in decisions affecting children.
 - 1. Many Tribes expected that children would be turned over to an aunt, an uncle, or the grandparents for rearing.
 - 2. These practices continued in traditional families, although sometimes in modified forms. Such children, when encountered by non-Indian systems, would be labeled as abandoned children and removed from the caretakers.
- C. In 1960 one third of all Indian children were in some type of out of home placement in Washington State. The majority of those placements were in non-Indian homes or institutions. As the children grew older or became adults, Indian Tribes and organizations experienced the phenomenon of teenagers and young adults searching for their Indian identity as they left failed adoptions and institutions. Many such young people felt as if something was terribly wrong with their lives. Many of the children were deeply disturbed, some extremely depressed and suicidal.
- D. As Tribes reasserted their intention to survive as governing entities and cultural groups, one of the pressing issues was to preserve what the Tribes called their greatest natural resource, their children. This was fully supported by off reservation Indian groups. These groups, which organized cultural and political activities, attracted large numbers of Indian adolescents and young adults who had been separated from their families and who were searching for their lost cultural identity.

01.205 Indian Child Welfare in Washington State Today

- A. In the early 1970s, Indian Tribes and groups began to address the issue of separation of Indian children from their communities. To correct the problem, Indian child welfare coalitions asked for changes in state policy, recognizing the harm caused by former state policy.

- B. As a result of negotiations by tribal governments and off-reservation Indian organizations with DSHS in the 1970's, each CA region now has a local LICWAC composed of tribal and Indian organization representatives.
 - 1. The LICWACs review case plans of Indian children, help search for relative, tribal, or other Indian resources, and provide additional services to benefit the case plans and children.
 - 2. The LICWAC members give their time at no cost to the state.
- C. With the passage of the ICWA and state laws regarding Indian Child Welfare (ICW), state and private agencies were put on notice that they would have to develop higher standards of service practice for Indian families and children. Unfortunately, the lack of consistent and adequate funding has hampered the efforts of Tribes and Indian organizations to assume complete charge of Indian child welfare.
- D. The CA has a continuing commitment to principles contained in ICWA. Off reservation and tribal groups expect to see Indian representation throughout the ranks of state employees. LICWACs and parents have campaigned to recruit volunteers and foster parents. Many regions have hired Indian workers to handle Indian cases. Some regions have designated trained groups of social workers ("Indian units") that specialize in cases involving Indian children.
- E. The Indian community is trying to develop tribal resources and off reservation Indian agencies that can provide culturally appropriate services to Indian families and placements for children. Many tribal centers and most urban areas have at least limited mental health services, drug/alcohol rehabilitation programs, and other resources for individuals of Indian descent. These agencies do not always have state contracts and struggle frequently with limitations of available funding.

- F. CA, to the extent it has the resources, must provide ICW training to state agency and licensed or certified private child placing agencies' social workers, supervisors, administrative, and policy making staff. CA must train its staff and private agency staff to screen their cases for early identification of Indian status and to staff these cases immediately with the Tribes or LICWAC. CA and private agencies must closely monitor cases involving Indian children to ensure compliance with the ICW WAC and state and federal laws applicable to Indian children, families, and Tribes.
- G. Tribal social workers and advocates need training. The Tribal-State Agreement mandates that CA will make available training for tribal agencies at their request and when funds are available.
- H. Special problems remain:
 - 1. Ensuring consistent departmental compliance with the ICWA and state ICW-related laws and the Tribal-State Agreement.
 - 2. Appropriate identification of experts who can provide culturally appropriate services or court testimony. Such experts should be knowledgeable about the specific culture of the tribal group of origin and about ICW practice. These experts should be identified and approved by tribal groups or Indian organizations.
- I. In the chapters to come, this manual will identify mandatory practice in Indian child welfare and will provide guidelines for social workers to comply with federal and state laws, the Tribal-State Agreement, and the WAC.
 - 1. CA is committed to a future where tribal, off-reservation Indian, state, and private systems intermesh to provide the higher standards of protection, services, and social work outlined by the ICWA.

2. CA looks forward to a time when disputed cases will not separate children from their Indian culture and children can count on receiving appropriate services and placement with smooth interaction between the state, private agencies, and Indian resources.

01.25 CA INDIAN AFFAIRS POLICY

A. Indian Policy Statement

1. The state of Washington recognizes the unique cultural and legal status of American Indians granted in U.S. Constitution's Supremacy and Indian Commerce Clauses. Other applicable standards include federal treaties, Executive Orders, the Indian Citizens' Act of 1924, ICWA, other statutes, and state and federal Court decisions.
2. Indian people retain the right to tribal self-government and hold dual status as citizens of the state and of tribal nations, as expressed in the Indian Self-Determination Act of 1964.
3. CA staff may consult with the IPSS Regional Indian Specialist, when available, the LICWAC liaison, or the ICW program manager when the CA staff need additional information or clarification on Indian affairs or issues pertaining to the delivery of services to Indian clients.

B. Local Indian Child Welfare Advisory Committees

As one effort to improve the delivery of services to Indian citizens, CA has established Local ICW Advisory Committees (LICWAC). The LICWAC:

1. Promotes relevant social service planning for Indian children when the children's Tribes are not available or the children's Tribes have requested LICWAC involvement for consultation and case plan development;

2. Encourages the preservation of Indian families and Tribes and the heritage of each Indian child referred to CA and the private child care and placing agencies that it licenses; and
3. Assures provision of necessary assistance to department staff by tribal representatives and off-reservation Indian organizations in the social service planning for Indian children for whom CA has a responsibility.

C. Tribal-State Agreement

As a further effort to provide services to Indian children and families, CA has adopted the Tribal-State Agreement as policy. This Agreement provides a blueprint for the development of local agreements, training, and other activities related to ICW issues. The Agreement resulted from a partnership formed by Indian Tribes in the state of Washington and CA. The Agreement is consistent with and expands on ICWA, the ICW provisions of the WAC, and state law.

01.30 AUDIENCE

- A. This manual applies to CA staff, licensed or certified public and private child care and placing agencies, and CA contractors.
- B. For the purpose of this manual the term "social worker" means all staff in the referenced audience providing services to Indian children and families. If a particular agency has responsibility for a specific task, the manual specifically references that agency; i. e., the first part of Chapter 05 applies to CA CPS social workers only.

01.35 COORDINATION AND COMMUNICATION WITH TRIBES AND NATIVE ORGANIZATIONS

A. Purpose and Scope

This protocol establishes guidelines for CA staff to obtain tribal involvement in the selection of CA staff who will serve or who will impact services on Native American/Alaskan Native/Canadian Band, Tribe or Metis children. The protocol also includes guidance for CA staff in responding to concerns expressed by tribal or off-reservation Indian organization representatives regarding CA staff performance in complying with ICW requirements.

B. Selection of Staff Providing Services to Indian Children

1. In order to employ staff with sensitivity to cultural and tribal issues in case decisions and service delivery, CA will involve Tribes and off-reservation Indian organizations in the selection of CA staff, including social workers, supervisors, Area Managers, Regional Administrators, Regional Managers, headquarters and regional program managers that:
 - CA will assign to an ICW caseload;
 - Will serve ICW cases on fairly routine basis; or
 - Will have an impact on cases involving Indian children.
2. When recruiting to hire such staff, the CA supervisor or manager must invite participation of each Tribe and off-reservation Indian child welfare organization in the service area by:
 - a. Asking for tribal and off-reservation organization participation in review of applications and/or recommendations on specific applicants.

- b. Inviting, with reasonable notice, tribal and off-reservation organization representatives to participate in the interviews if they choose. CA and affected Tribes and off-reservation Indian organizations will define timeframes for notice and invitations in local agreements between CA and the affected Tribes and organizations.
3. The responsible CA appointing authority retains final responsibility for selection of the successful candidate for employment. However, the CA Manager must give careful consideration to tribal comments and preferences in selecting the successful candidate.
4. The CA supervisor must notify the tribal and off-reservation Indian organization representatives of the person selected to fill the position as soon as CA selects an applicant from the candidates presented.

C. Communication on Performance Concerns

1. CA encourages tribal and off-reservation Indian organization representatives to identify concerns regarding CA staff performance regarding ICW issues at the lowest appropriate level in the organization, beginning with the employee with whom the Tribe or Indian organization has concerns. CA encourages both CA staff and the tribal and off-reservation Indian organization to utilize problem-solving techniques as appropriate at all levels of the resolution process.
2. Whenever a Tribe or off-reservation Indian organization expresses concern about ICW-related performance of a CA employee, the appropriate CA supervisor or manager will treat the expression of concern with respect and assure the tribal or organization representative that CA will review the issue with the involved employee.

3. The CA supervisor or manager will review the situation with the involved employee and implement appropriate corrective steps, as necessary. The supervisor or manager will then inform the tribal or organization representative that the supervisor or manager has reviewed the situation with the CA employee and that the employee and the supervisor or manager have undertaken corrective steps, where indicated.
4. CA managers may take action appropriate to the situation, consistent with personnel rules and the Union/Management Agreement between the department and the Washington Federation of State Employees, including, but not necessarily limited to, reassignment of the employee. CA may not share information on the specific personnel actions with the Tribe or off-reservation Indian organization.
5. Tribes and off-reservation Indian organizations may take issues up the DSHS chain of command if they believe CA has not adequately addressed their concerns at the local or regional levels.

01.40 SANCTIONS FOR NONCOMPLIANCE - PRIVATE AGENCIES AND CONTRACTORS

A. Complaints

1. CA-licensed or certified public and private child care and placing agencies and CA contractors must comply with all federal and state laws and policies related to Indian child welfare, including the CA's *Indian Child Welfare Manual*.
2. CA staff receiving complaints regarding noncompliance by a particular agency need to refer the complainant to the Division of Licensed Resources (DLR) licenser for the agency, if a licensed or certified agency, the CA Division of Program and Policy Development child care or placing agency program manager, and the ICW program manager.

3. If CA determines, after investigation, that the private child care or child placing agency or CA contractor has not complied with applicable laws, policies or manual provisions, CA must take the corrective actions outlined below.

B. Licensed or Certified Agencies

1. Where it appears noncompliance is an isolated incident, the CA licenser must write a deficiency report and require a plan of correction. The plan must describe corrective action planned to correct identified deficiencies and to assure no repetition of the non-compliant practice. The licenser must provide a copy of the corrective action plan to the Tribe(s) of any Indian child(ren) involved in a noncompliance incident.
2. Where, as the result of a review of additional complaints, CA determines that the agency is unable or unwilling to comply with the requirements of ICWA, this manual, or with WAC 388-73-044, CA must take action against the license and/or the contract of the child care or placing agency. CA's licensing action may include, but is not necessarily limited to, the following:

a. Suspension/summary suspension of a license

Either action would prohibit an agency from operating during the period of suspension and would interrupt CA's payments to the agency for child care and services. CA may lift the suspension when the agency comes into compliance.

b. Provisional licensure of an agency

The agency may operate and receive payment during the period in which CA has provisionally licensed the agency. However, CA may deny application for full license if the agency fails to provide evidence of compliant corrective action within 30 days of receipt of the provisional license.

c. **Amendment or modification**

CA may amend or modify a license to prohibit the agency from caring for Indian children or impose other restrictions/requirements upon the licensee.

d. **License Revocation**

CA must revoke a license where it is evident that lesser actions have not been or will not be effective in gaining compliance with the requirements.

C. **CA Contractors**

1 For those private or public child welfare agencies having contracts with DSHS, CA may take contract actions in addition to licensing actions. Regional or state office contracting staff, not licensing staff, initiate contract actions, after determining the agency is out of contract compliance. Child care or placing agency contracts also require conformity to licensing standards, so contract action may be based on the finding of noncompliance with the requirements of this manual or with WAC 388-73-044, as well.

2. Contract actions include, but are not limited to, the following:

a. **Stop Placement Notice**

A stop placement notice, usually issued by a regional office, informs the public or private agency, other regions, and the state office that the department will not make placements with the agency. The stop placement notice does not interrupt payment on behalf of children already placed with the agency by the department. The stop placement notice does not prohibit the agency from accepting children from sources other than the department.

b. **Contract Amendment**

CA may amend the contract to stop payment for the care of Indian children.

c. **Contract Termination**

CA may terminate the contract with the agency. Such action will cause the department to remove all children placed with the agency through the department and to stop all payments under the contract.

D. **Additional Sanctions for Noncompliance**

In all cases where the department or a responsible federal agency determines that an agency licensed, certified, or contracted by the department violated ICWA, CA must take the following actions, in addition to possible licensing and contract actions.

1. The DCFS Regional Administrator or DLR Regional Manager, as applicable, must prepare and send to the Assistant Secretary, Children's Administration, a report of noncompliance. The Assistant Secretary must forward the report to the Bureau of Indian Affairs (BIA). If the case involves children who are members of or eligible for membership in any Tribe, the Assistant Secretary must provide a copy of the noncompliance report to the Tribe.
2. The Assistant Secretary, Children's Administration, on tribal or BIA recommendation, must request that the State Attorney General develop an *amicus* brief in support of tribal or BIA legal action taken against an agency for noncompliance.
3. In support of any tribal or BIA legal action, department staff may serve as expert witnesses in legal proceedings, upon request of the Tribe or BIA.
4. CA, in consultation with the Attorney General's Office, must explore and pursue other available legal remedies to secure compliance with federal law requirements.

01.45 REQUIREMENT WAIVERS

A DCFS Regional Administrator or the DLR Director may waive provisions of this manual only in accordance with the provisions of the *CA Operations Manual*, chapter 2000, section 2320. Before granting waivers of these provisions, the Regional Administrator or Director must consult with the affected Tribes and off-reservation Indian organizations.

01.50 LICWAC/STATE IMPASSE PROCEDURES

A. Purpose and Scope

1. CA staff will use these procedures strictly as guidelines to promote good communication and to expedite timely resolution of issues related to cases involving CA social workers and the CA-appointed Local Indian Child Welfare Advisory Committee (LICWAC) or non-tribal Indian child welfare organizations. CA and the LICWAC or Tribe may not use impasse procedures to circumvent a court order.
2. While CA cannot impose these requirements on Tribes, as Sovereign Nations, CA strongly encourages Tribes to use these procedures as steps to resolve issues at the lowest level possible within the CA organizational structure. These procedures do not supersede, diminish, or infringe upon tribal sovereignty, the Centennial Accord, or any other tribal/state agreements that address tribal impasse procedures.

B. Definition

The following definition applies to this section:

“Impasse” means a deadlock between CA and the LICWAC or child's Tribe following thorough discussion by the CA social worker of the case plan and case decisions with the worker's supervisor and managers and the LICWAC or tribal designee, as applicable, does not concur with the department's plan and decisions.

See chapter 14 for definitions of the following terms:

- “Indian Child”
- “Washington State Indian Child”
- “Canadian First Nations Child”
- “Recognized Indian Child”
- “Local Indian Child Welfare Advisory Committee,” or LICWAC

C. Procedures

If the LICWAC does not agree with the CA social worker's case plan for the Indian child, CA and the LICWAC implement the following procedures to resolve the impasse. If the child's Tribe does not agree with the case plan for the Indian child, who is a member or eligible for membership in the particular Tribe, the Tribe may utilize the procedures to resolve the impasse. CA does not intend to apply the impasse procedures to disagreements about a specific service or service provider.

1. CA encourages the LICWAC or the child's Tribe to first seek resolution of issues with the social worker's supervisor prior to invoking these procedures.
2. For cases where the LICWAC or the child's Tribe does not assess the child to be at imminent harm, the timeframes contained in these procedures may be extended if CA and the LICWAC or the Tribe mutually agree to the extension.
3. Within one work day after the LICWAC or the Tribe determines that an impasse exists, the LICWAC Chair or tribal designee will notify the CA Area Manager or DLR Regional Manager, as applicable, who will schedule an impasse staffing. The LICWAC Chair or tribal designee may deliver the notice by fax, e-mail, in writing, or telephone and should include all major points of disagreement so that each issue can obtain resolution. Following any verbal notice, the CA social worker needs to request a written statement from the LICWAC Chair or Tribe.

- a. CA encourages the CA Area Manager or DLR Regional Manager, as applicable, to mediate a resolution to the dispute at any point in the proceeding. Provided mediation is unsuccessful, the Area Manager or Regional Manager schedules the impasse staffing with the LICWAC or tribal designee(s), the CA social worker, the social worker's supervisor, the Regional Administrator or Regional Manager, the CA headquarters ICW program manager, and, if necessary, an Assistant Attorney General with expertise in ICW issues. Scheduling needs to occur within five working days.
 - b. If CA or the LICWAC or Tribe, as applicable, believes the child(ren) is in imminent danger or at serious risk of harm, CA must follow the Child Protection Team (CPT) guidelines. See the *CA Practices and Procedures Guide*, chapter 2000, section 2562. CA will place the child out of potential danger until CA holds a staffing, that includes the Regional Administrator or Regional Manager, as applicable, within one work day of the placement.
4. If a court hearing is imminent, the CA social worker needs to request the Assistant Attorney General to seek a continuance to provide additional time to reconcile any disagreement between the CA social worker and the Tribe.
5. If the court hearing is not continued, the Area Manager will schedule the impasse staffing prior to the hearing. CA recognizes that, due to the legal requirement to hold a shelter care hearing within 72 hours, excluding weekends and holidays, of the child's placement in shelter care, CA may not always be able to conduct the impasse staffing before the hearing.
6. If the LICWAC or the Tribe and CA cannot mutually resolve the impasse at the regional level, the Regional Administrator or the Regional Manager, as applicable, and the LICWAC or tribal designee notify the Assistant Secretary for Children's Administration of the need to schedule an impasse staffing to occur within three work days of the notification.

7. The Area Manager and Regional Administrator or Regional Manager, when applicable, will participate at impasse meetings beyond the regional level. The social worker and/or supervisor may participate at the request of the Regional Administrator or Regional Manager, as applicable.
8. The CA social worker submits and requests the LICWAC or Tribe to submit by fax or e-mail the LICWAC or Tribe's concerns to the Assistant Secretary's office. The social worker must also submit any previous staffing minutes and other documents pertinent to the decision to the Assistant Secretary prior to the impasse staffing. The social worker or other CA representative, if the social worker does not attend, must bring the complete case file to the impasse staffing.
9. If CA and the Tribe cannot mutually resolve the impasse at the Assistant Secretary's level, the Assistant Secretary notifies the DSHS Secretary that the Secretary's Office needs to schedule a final impasse staffing within three work days of the notification. The Assistant Secretary will forward all case related documentation to the Secretary's Office.
10. CA must make every effort to include all parties to the original impasse at each level of review.
11. The Secretary's decision on the impasse is final.

